

REGULAR MONTHLY MEETING OF BERKELEY COUNTY COUNCIL

September 28, 2009

The **Regular Monthly Meeting of Berkeley County Council** was held on Monday, **September 28, 2009**, at 8:19 p.m., in the Assembly Room of the Berkeley County Administration Building, 1003 Highway 52, Moncks Corner, South Carolina.

PRESENT: Mr. Daniel W. Davis, Supervisor, Chairman; Mr. Caldwell Pinckney, Jr., Council Member District No. 7, Vice Chairman; Mr. Phillip Farley, Council Member District No. 1; Mr. Timothy J. Callanan, Council Member District No. 2; Mr. Robert O. Call, Jr., Council Member District No. 3; Mrs. Cathy S. Davis, Council Member District No. 4; Mr. Dennis L. Fish, Council Member District No. 5; Mr. Jack H. Schurlknight, Council Member District No. 6; Mrs. Nicole Scott Ewing, County Attorney; and Ms. Barbara B. Austin, Clerk of County Council. Mr. Steve C. Davis, Council Member District No. 8, was excused from this meeting.

In accordance with the Freedom of Information Act, the electronic and print media were duly notified.

During periods of discussion and/or presentations, minutes are typically condensed and paraphrased.

CALL TO ORDER

Chairman Daniel Davis called the meeting to order.

APPROVAL OF MINUTES

Chairman Daniel Davis asked for approval of minutes from a Special Meeting of Council held August 10, 2009; Public Hearings for Bills Numbered 09-26, 09-27, 09-28, 09-29, 09-31, 09-32 and 09-37, and a Regular Meeting of Council held August 24, 2009.

It was moved by Council Member Schurlknight and seconded by Council Member Callanan to **approve** the **minutes** as presented. The motion passed by unanimous voice vote of Council.

PUBLIC DISCUSSION

Mr. David Wenger, residing at 204 Limber Court, Ladson, addressed Council and stated some facts with regard to a request to rezone his property located at 101 Tall Pines Road, Ladson. Mr. Wenger and his wife have been residents of the Tall Pines Subdivision for 30 years, in addition to being members of the Tall Pines Homeowners Association. The building, located

on the parcel requested for rezoning, is located on the corner fronting Treeland Drive at the entrance of the Tall Pines Subdivision. Tall Pines has two other entrances, and the corner lots at those entrances are zoned Commercial. The building, owned by Mr. and Mrs. Wenger (101 Tall Pines Road), was built in 1973, and since that time, it has been used as a real estate office, architect office and a property management office. It was built to be used as an office or commercial building. In 1995, Mr. and Mrs. Wenger purchased the property, prior to zoning, in good faith that it was, in fact, a commercial building, as stated by the realtor and seller, and by Berkeley County records. The electric company and tax statements recognize this parcel as Commercial. In 2004, Mr. and Mrs. Wenger were made aware by Planning and Zoning that 101 Tall Pines Road was not a commercial building, but rather zoned as a residence. The parking lot is 60 feet by 80 feet (approximately 5,000 square feet). It is basically a welcome center or rest stop for those living out of town and coming into Tall Pines. The building itself houses the electric meter for the Tall Pines Homeowners Association for lighting at the entrance to the subdivision. Mr. Wenger stated that he and his wife had been open, upfront and working with the Homeowners Association, Planning Commission and Council, taking recommendations and following through with those recommendations. In conclusion, Mr. Wenger stated that the building has always been a non-residence in its 36 years of existence, and asked that Council consider his request to rezone the property to a Planned Development Office Park/Industrial Park District.

Ms. Dawn Wright, residing at 1304 Shore Pine Drive, Ladson, addressed Council and stated rezoning issues with regard to 101 Tall Pines Road, Ladson. Ms. Wright stated that she is the current president of the Tall Pines Homeowners Association. While she personally sympathized with Mr. and Mrs. Wenger's situation, Ms. Wright was present this night to convey the wishes of many of the residents in Tall Pines, which are in opposition to any rezoning of 101 Tall Pines Road. This parcel is located within the Tall Pines Special Tax District. Ms. Wright stated that approximately five years ago, in September 2004, Mr. Wenger attempted to rezone this parcel. At that time, residents showed up in force in opposition to the rezoning also. In conclusion, Ms. Wright stated that nothing, other than time itself, had changed since 2004, as residents remained opposed to any rezoning of 101 Tall Pines Road.

Mr. Kenneth Sellers, residing at 119 Tall Pines Road, Ladson, addressed Council and stated his opposition to any rezoning of 101 Tall Pines Road. Mr. Sellers presented a map of the Tall Pines Area and stated that he lived approximately seven to eight houses from the parcel being considered for rezoning. Mr. Sellers stated that all the homes on that road were close to the road. Mr. Sellers stated that when these houses were built back in the early 1970's, they were constructed as model homes, and property would be sold out of those model homes until construction completion of the subdivision. Thereafter, those offices (model homes) were sold as homes. Mr. Sellers stated that 101 Tall Pines Road was used for that purpose, as the size of the house was of the same dimensions as other homes in that area. Mr. Sellers referred to the map and stated that all of the houses along Loblolly Circle were closer to the road than 101 Tall Pines was. The house at 101 Tall Pines was currently being used as a school, so the house was not useless or dilapidated, because there were children in it now. In conclusion Mr. Sellers stated that residents of Tall Pines did not want any change in the zoning of this parcel.

Mr. Paul Helms, residing at 1015 Highland Pines Road, Ladson, addressed Council and stated his opposition to any rezoning of 101 Tall Pines Road. Mr. Helms stated that he is a member of the Tall Pines Homeowners Association. In conclusion, Mr. Helms asked the citizens for a show of hands of those residents present this night in opposition to the rezoning of 101 Tall Pines Road for Council's observance.

EXECUTIVE SESSION – none

Without objection, Chairman Daniel Davis stated that it was getting late, and children in the audience had to attend school the following morning. Thus, the agenda would be adjusted, in order to adopt the Proclamation honoring Berkeley County 4-H Club and proclaiming October 4-10, 2009, as National 4-H Week.

“PROCLAMATION OF BERKELEY COUNTY, SOUTH CAROLINA, PROCLAIMING OCTOBER 4-10 AS 4-H WEEK IN BERKELEY COUNTY.”

It was moved by Council Member Farley and seconded by Council Member Cathy Davis to adopt the **proclamation** proclaiming October 4-10, 2009 as **4-H Week** in Berkeley County. The motion passed by unanimous voice vote of Council.

THIRD READING

“BILL NO. 09-26, AN ORDINANCE TO MODIFY THE OFFICIAL ZONING AND DEVELOPMENT STANDARDS MAP OF BERKELEY COUNTY, SOUTH CAROLINA, IN REGARD TO A RECLASSIFICATION OF APPROVED USES FOR TMS #263-00-01-013.”
(Tommy Boals)

Chairman Daniel Davis stated that **Bill No. 09-26** would be held for 30 days.

“BILL NO. 09-33, AN ORDINANCE TO MODIFY THE OFFICIAL ZONING AND DEVELOPMENT STANDARDS MAP OF BERKELEY COUNTY, SOUTH CAROLINA, IN REGARD TO A RECLASSIFICATION OF APPROVED USES FOR TMS #207-00-01-090.”
(Forsberg Engineering for GSR Jedberg, LLC)

It was moved by Council Member Pinckney and seconded by Council Member Callanan to **approve Bill Number 09-33 for Third Reading**. The motion passed by unanimous voice vote of Council. *(A copy of Ordinance No. 09-09-45 is attached to these minutes.)*

“BILL NO. 09-34, AN ORDINANCE TO MODIFY THE OFFICIAL ZONING AND DEVELOPMENT STANDARDS MAP OF BERKELEY COUNTY, SOUTH CAROLINA, IN REGARD TO A RECLASSIFICATION OF APPROVED USES FOR TMS #015-00-03-022.”
(Henrietta Acton)

It was moved by Council Member Pinckney and seconded by Council Member Fish to approve Bill Number 09-34 for Third Reading. The motion passed by unanimous voice vote of Council. (A copy of Ordinance No. 09-09-46 is attached to these minutes.)

“BILL NO. 09-35, AN ORDINANCE TO MODIFY THE OFFICIAL ZONING AND DEVELOPMENT STANDARDS MAP OF BERKELEY COUNTY, SOUTH CAROLINA, IN REGARD TO A RECLASSIFICATION OF APPROVED USES FOR TMS #141-00-02-010.”
(Bonnie Jean & Jonathan Craven)

It was moved by Council Member Schurlknight and seconded by Council Member Pinckney to approve Bill Number 09-35 for Third Reading. The motion passed by unanimous voice vote of Council. (A copy of Ordinance No. 09-09-47 is attached to these minutes.)

“BILL NO. 09-36, AN ORDINANCE TO MODIFY THE OFFICIAL ZONING AND DEVELOPMENT STANDARDS MAP OF BERKELEY COUNTY, SOUTH CAROLINA, IN REGARD TO A RECLASSIFICATION OF APPROVED USES FOR TMS #263-00-03-080.”
(Joseph McComb)

It was moved by Council Member Callanan and seconded by Council Member Schurlknight to approve Bill Number 09-36 for Third Reading. The motion passed by unanimous voice vote of Council. (A copy of Ordinance No. 09-09-48 is attached to these minutes.)

“BILL NO. 09-37, AN ORDINANCE AUTHORIZING THE EXECUTION AND DELIVERY OF A SECOND AMENDMENT TO FEE AGREEMENT BETWEEN BERKELEY COUNTY, SOUTH CAROLINA, AND RG-MWV, LLC; AND MATTERS RELATING THERETO.”

Chairman Daniel Davis stated that **Bill No. 09-37** would be held for 30 days.

“BILL NO. 09-39, AN ORDINANCE AUTHORIZING THE CONVERSION OF A LEASE AGREEMENT, PURSUANT TO TITLE 4, CHAPTER 12, OF THE CODE OF LAWS OF SOUTH CAROLINA 1976, AS AMENDED, TO A FEE AGREEMENT, PURSUANT TO TITLE 12, CHAPTER 44, OF THE CODE OF LAWS OF SOUTH CAROLINA 1976, AS AMENDED, AND APPROVING THE ASSIGNMENT OF THE INTERESTS OF PIG CENTER, LLC, IN SUCH CONVERTED FEE AGREEMENT TO JL WOODE LTD., LLC, OR AN ENTITY OR ENTITIES OWNED IN WHOLE OR PART BY JL WOODE LTD., LLC, OR ONE OR MORE OF ITS PRINCIPALS AND SUBSEQUENT ASSIGNMENTS RELATED THERETO, INCLUDING THROUGH THE USE OF ONE OR MORE QUALIFIED INTERMEDIARIES; THE ENTERING INTO OF CERTAIN AGREEMENTS INCLUDING THE AFORESAID FEE AGREEMENT; AND OTHER MATTERS RELATED THERETO.”

It was moved by Council Member Schurlknight and seconded by Council Member Pinckney to approve Bill No. 09-39 for Third Reading. The motion passed by unanimous voice vote of Council. (A copy of Ordinance No. 09-09-49 is attached to these minutes.)

Berkeley County Council Rules allow all bills to be given Second Reading by one motion as a collective group. Any member may object to a particular bill, and it shall be separated from the collective group and handled by a separate motion.

SECOND READING

“BILL NO. 09-30, AN ORDINANCE AUTHORIZING THE AMENDED AND RESTATED FEE-IN-LIEU OF TAX AGREEMENT (THE ‘AMENDED AND RESTATED FEE AGREEMENT’) BY AND BETWEEN BERKELEY COUNTY, SOUTH CAROLINA, AND HW BERKELEY PHASE II-A, LLC, HW BERKELEY PHASE II-B, LLC, HW BERKELEY PHASE II-C, LLC, HLIT IV SC-1, LP, AND HLIT IV SC-2, LP, (THE ‘PARTIES’) AND THE BIFURCATION THEREOF, THE RESULT OF WHICH SHALL BE TWO SEPARATE AMENDED AND RESTATED FEE-IN-LIEU OF TAX AGREEMENTS TITLED AS FOLLOWS: (1) THE AMENDED AND RESTATED FEE-IN-LIEU OF TAX AGREEMENT BY AND BETWEEN BERKELEY COUNTY, SOUTH CAROLINA, AND HW BERKELEY PHASE II-A, LLC, HW BERKELEY PHASE II-B, LLC, AND HW BERKELEY PHASE II-C, LLC (‘PHASE TWO’); AND (2) THE AMENDED AND RESTATED FEE-IN-LIEU OF TAX AGREEMENT BY AND BETWEEN BERKELEY COUNTY, SOUTH CAROLINA, AND HLIT IV SC-1, LP, AND HLIT IV SC-2, LP (‘PHASE ONE’), IN CONSIDERATION OF ADDITIONAL ON-GOING INVESTMENT BY THE COMPANY; AND OTHER MATTERS RELATING TO THE FOREGOING.”

“BILL NO. 09-38, AN ORDINANCE TO AMEND THE CODE OF ORDINANCES, BERKELEY COUNTY, SOUTH CAROLINA, REGARDING THE REGULATION OF THE USE OF PUBLIC AND PRIVATE WATER DISTRIBUTION SYSTEMS.”

“BILL NO. 09-40, AN ORDINANCE TO AMEND ORDINANCE NO. 97-04-18 TO ALLOW FOR CHANGES IN THE PREFERENCE THAT IS GIVEN TO BUSINESSES IN BERKELEY COUNTY, THE STATE OF SOUTH CAROLINA, IN THE AWARDED OF COUNTY CONTRACTS.”

It was moved by Council Member Farley and seconded by Council Member Schurlknight to approve Bills Numbered 09-30, 09-38 and 09-40 for Second Reading by one motion as a collective group. The motion passed by unanimous voice vote of Council.

FIRST READING

Chairman Daniel Davis stated there were four bills for First Reading. *(Bills for First Reading are not discussed or voted upon. The bills are read into the record by title only and, thereafter, sent to the proper Committee for further consideration.)*

“BILL NO. 09-41, AN ORDINANCE TO AMEND AND CLARIFY CERTAIN SECTIONS OF ORDINANCE NO. 01-08-35, ADOPTED AUGUST 27, 2001, ZONING AND DEVELOPMENT STANDARDS ORDINANCE, “BERKELEY COUNTY ZONING ORDINANCE” AND AMENDING ORDINANCES NUMBERED 02-08-33, 02-12-58, 04-11-

68, 05-03-08, 05-08-58, 06-09-63, 06-12-92 AND 07-07-43, IN REGARD TO THE PROPOSED CREATION OF AN **ARTERIAL ROADS OVERLAY DISTRICT.**"

"BILL NO. 09-42, AN ORDINANCE TO MODIFY THE OFFICIAL ZONING AND DEVELOPMENT STANDARDS MAP OF BERKELEY COUNTY, SOUTH CAROLINA, IN REGARD TO A RECLASSIFICATION OF APPROVED USES FOR TMS #242-03-002."
(David and Joanne Wenger)

"BILL NO. 09-43, AN ORDINANCE AMENDING ORDINANCE NO. 09-07-35 PROVIDING FOR THE FISCAL YEAR BEGINNING JULY 1, 2009, AND ENDING JUNE 30, 2010, FOR THE TALL PINES SPECIAL TAX DISTRICT REVENUES AND EXPENDITURES."

"BILL NO. 09-44, AN ORDINANCE AUTHORIZING THE EXECUTION AND DELIVERY OF A FEE AGREEMENT BETWEEN BERKELEY COUNTY, SOUTH CAROLINA, AND JOSEPH T. RYERSON & SON, INC.; AND MATTERS RELATING THERETO."

RESOLUTIONS

"RESOLUTION PROVIDING FOR THE TRANSFER OF FUNDS IN THE 2008-2009 BERKELEY COUNTY BUDGET FOR COUNTY PURPOSES OTHER THAN AS SPECIFIED IN SAID BUDGET."

It was moved by Council Member Schurlknight and seconded by Council Member Pinckney to approve the resolution providing for a transfer of funds in the 2008-2009 Budget for Berkeley County. The motion passed by unanimous voice vote of Council. (A copy of Resolution No. 09-30 is attached to these minutes.)

"RESOLUTION PROVIDING FOR THE TRANSFER OF FUNDS IN THE 2009-2010 BERKELEY COUNTY BUDGET FOR COUNTY PURPOSES OTHER THAN AS SPECIFIED IN SAID BUDGET."

It was moved by Council Member Callanan and seconded by Council Member Fish to approve the resolution providing for a transfer of funds in the 2009-2010 Budget for Berkeley County. The motion passed by unanimous voice vote of Council. (A copy of Resolution No. 09-31 is attached to these minutes.)

"RESOLUTION PROVIDING THAT UNDER CERTAIN CONDITIONS, BERKELEY COUNTY WILL ENTER INTO AN AGREEMENT PURSUANT TO TITLE 12, CHAPTER 44, OF THE CODE OF LAWS OF SOUTH CAROLINA WITH JOSEPH T. RYERSON & SON, INC."

It was moved by Council Member Farley and seconded by Council Member Fish to approve the resolution providing Berkeley County to enter into an agreement with Joseph T.

Ryerson & Son, Inc. The motion passed by unanimous voice vote of Council. *(A copy of Resolution No. 09-32 is attached to these minutes.)*

“RESOLUTION OF THE COUNTY COUNCIL OF BERKELEY COUNTY, SOUTH CAROLINA, APPROVING THE ASSESSMENTS AS SET FORTH IN THE ASSESSMENT ROLL OF THE JEDBURG ROAD IMPROVEMENT DISTRICT AND THE JEDBURG ROAD IMPROVEMENT PLAN, AS ADOPTED BY COUNTY COUNCIL IN ORDINANCE NUMBER 09-02-05, PURSUANT TO TITLE 4, CHAPTER 35, OF THE CODE OF LAWS OF SOUTH CAROLINA 1976, AS AMENDED.”

It was moved by Council Member Pinckney and seconded by Council Member Schurlknight to **approve** the **resolution** approving **assessments** as set forth in the assessment roll of the **Jedburg Road Improvement District** and the **Jedburg Road Improvement Plan**. The motion passed by unanimous voice vote of Council. *(A copy of Resolution No. 09-33 is attached to these minutes.)*

REPORTS FROM STANDING COMMITTEES

Committee on Finance

Council Member, Mr. Jack H. Schurlknight, Chairman

Chairman Schurlknight reported that the Committee on Finance met September 14th and earlier this night. Many matters before the Committee were addressed earlier on this night's agenda.

a. Benefits Update

On recommendation of the Committee, Chairman Schurlknight moved to **approve** Berkeley County to pay the employer **benefit** state rate, plus \$100.00 per each employee for the 2010 benefit year. *(No second required.)*

The motion passed by unanimous voice vote of Council.

AMENDED OCTOBER 26, 2009

It was moved by Council Member Timothy Callanan and seconded by Council Member Steve Davis to amend the September 28, 2009 Finance Committee report to approve Berkeley County to pay the Berkeley County employer state rate, plus \$100.00, per each employee for the 2010 benefit year.

b. Grievance Committee Appointment

On recommendation of the Committee, Chairman Schurlknight moved to **appoint** Mr. Shaun Bunton to serve on the Berkeley County **Grievance Committee** through April 30, 2010. *(No second required.)*

The motion passed by unanimous voice vote of Council.

(That concluded Chairman Schurlknight's report.)

Committee on Land Use
Council Member, Mr. Phillip Farley, Chairman

Chairman Farley reported that the Committee on Land Use met September 14th. All matters before the Committee were addressed earlier on this night's agenda.

(That concluded Chairman Farley's report.)

Committee on Public Works and Purchasing
Council Member, Mr. Robert O. Call, Jr., Chairman

Chairman Call reported that the Committee on Public Works and Purchasing met September 14th and earlier this night.

**a. Bid Correction: Medical Supplies and Medications for Berkeley County
Emergency Medical Services**

On recommendation of the Committee, Chairman Call moved to **approve** a **bid correction**, and **award** the contract for **medical supplies** and **medications** for the Berkeley County Emergency Medical Service to Bound Tree Medical, in the amount of \$44,543.40. *(No second required.)*

The motion passed by unanimous voice vote of Council.

b. Municipal Lease Purchase Financing

On recommendation of the Committee, Chairman Call moved to **award** the **municipal lease purchase financing** to Branch Banking & Trust Company (BB&T), with an annual percentage rate of 3.570 for three years, with a first year payment of \$150,000.00 and a \$137,814.85 payment for each year of the remaining two years. *(No second required.)*

The motion passed by unanimous voice vote of Council.

c. Standardization of Heavy Equipment

On recommendation of the Committee, Chairman Call moved to **deny** the request for **standardization of heavy equipment**. *(No second required.)*

The motion passed by majority voice vote of Council. Council Member Pinckney and Council Member Schurlknight voted, "Nay."

d. Sole Source Request for Certain Heavy Equipment

This item was not necessary for consideration, as the request for standardization of heavy equipment was denied.

(That concluded Chairman Call's report.)

Committee on Justice and Public Safety
Council Member, Steve C. Davis, Chairman

In Chairman Steve Davis' absence, Acting Chairman Schurlknight reported that the Committee on Justice and Public Safety met September 14th.

Transfer of Pool Fire Fees

On recommendation of the Committee, Acting Chairman Schurlknight moved to approve the transfer of pool fire fees, as follows: Moncks Corner Rural, \$2,900.00; Bonneau Rural, \$5,142.96; Cordesville Rural, \$7,000.00; Santee Circle Rural, \$7,985.00; Lebanon Rural, \$21,926.39; Pine Ridge Rural, \$9,100.00; Cross Rural, \$12,000.00; a total transfer amount of \$66,054.35. (No second required.)

The motion passed by unanimous voice vote of Council.

(That concluded Chairman Steve Davis' report.)

Committee on Water and Sanitation
Council Member, Mr. Timothy J. Callanan, Chairman

Chairman Callanan reported that the Committee on Water and Sanitation met September 14th. All matters before the Committee were addressed earlier on this night's agenda.

(That concluded Chairman Callanan's report.)

Committee on Planning and Development
Council Member, Mrs. Cathy S. Davis, Chairman

No report.

Committee on Community Services
Council Member, Mr. Caldwell Pinckney, Jr., Chairman

Chairman Pinckney reported that the Committee on Community Services met September 14th. Many matters before the Committee were addressed earlier on this night's agenda.

Shelving Expansion for Daniel Island Library [no additional funds required]

On recommendation of the Committee, Chairman Pinckney moved to **approve shelving expansion** for the **Daniel Island Library** for a total cost of \$9,468.01, with no additional funds required. (No second required.)

The motion passed by unanimous voice vote of Council.

(That concluded Chairman Pinckney's report.)

Committee on Human Services
Council Member, Mr. Dennis L. Fish, Chairman

No report.

NOMINATIONS FOR MEMBERSHIP ON BOARDS, COMMISSIONS, ETC.

Council Member Fish nominated Mr. Neal Menkus, Mr. Mark Blevins, Mr. James Gaskin and Mr. David Wright for re-appointments and Mr. Terry Hess (replacing Mr. Dennis Zabawa) for appointment to the Tall Pines Special Tax District.

It was moved by Council Member Schurlknight and seconded by Council Member Cathy Davis to **approve nominations** to the Tall Pines Special Tax District. The motion passed by unanimous voice vote of Council.

Council Member Call nominated Mrs. Joanne Page for re-appointment to the Berkeley County Library Board.

It was moved by Council Member Schurlknight and seconded by Council Member Fish to **approve the nomination** to the Berkeley County Library Board. The motion passed by unanimous voice vote of Council.

CORRESPONDENCE – none

UNFINISHED BUSINESS – none

NEW BUSINESS – none

ANNOUNCEMENTS

The **October 2009 Regular Meeting of Berkeley County Council** will be held on **Monday, October 26, 2009**, immediately following Public Hearings and other Committee

Meetings at **6:00 p.m.**, in the **Assembly Room** of the **Berkeley County Administration Building**, 1003 Highway 52, Moncks Corner, South Carolina.

ADJOURNMENT

It was moved by Council Member Schurlknight and seconded by Council Member Fish to **adjourn** the Regular Meeting of County Council. The motion passed by unanimous voice vote of Council.

Meeting adjourned at 8:51 p.m., for the execution of documents by Council.

PUBLIC DISCUSSION – none

S/Barbara B. Austin, CCC
Clerk of Council

October 26, 2009
Date Approved